



**Pacific Gas and
Electric Company.**

Lo
3/3/05

Environmental Support and Services Department

77 Beale Street, 24th Floor

San Francisco, CA 94105

FAX: (415) 973-9201

To: Kasey Ashley From: Tricia Sullivan
Company: Northwest RWQCB Phone: (415) 973-6254
Fax: (707) 523-0135 Pages: 9
Phone: (707) 576-2673 Date: 3/1/2005
Re: _____ cc: _____

☐ Urgent ☒ For Review ☐ Please Comment ☐ Please Reply

• **Comments**

Kasey - FYI. This Eureka-1 MGP deed restriction was
signed by our Vice President on 2/23/2005 -
This deed restriction was mailed to Humboldt
County for recording on Thursday Feb. 24th -
so it should be in their hands.
Tricia

If you do not receive all pages or if you have any questions regarding this fax please call the person named above.

Always remember to recycle when possible.

Recording Requested By:

Pacific Gas & Electric Company

When Recorded, Mail To:

Catherine E. Kuhlman, Executive Officer
California Regional Water Quality Control Board
North Coast Region
5550 Skylane Boulevard, Suite A
Santa Rosa, California 95403

**COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY**

Pacific Gas & Electric Company
Railroad Avenue
Eureka, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 16th day of December, 2004 by Pacific Gas & Electric Company ("Covenantor") who is the Owner of record of that certain property situated at Fourteenth Street and Railroad Avenue, in the City of Eureka, County of Humboldt, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Burdened Property"), for the benefit of the California Regional Water Quality Control Board for the North Coast Region (the "Regional Water Board"), with reference to the following facts:

- A. The Burdened Property contains hazardous materials.
- B. Contamination of the Burdened Property. Soil at the Burdened Property was contaminated by operations associated with the former manufactured gas plant owned and operated by Pacific Gas & Electric Company. These operations resulted in contamination of soil with organic chemicals including Total Petroleum Hydrocarbons as Bunker C and semi-volatile organic compounds. Lead was also found at elevated levels (this appears to be due to pre-PG&E activities). These constituents constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. All hazardous waste was excavated and transported from the site. Designated waste, in the form of contaminated soils, and as defined in the California Water Code, Section 13173) remains in place and the ground surface has been capped by a 4-inch-thick asphalt concrete layer constructed upon an 8-inch-thick base rock layer. The site was graded for drainage prior to placement of the cap and installation of an underground storm water collection system. Drainage pipes were installed and connected to the City of Eureka storm sewer system to prevent surface water runoff from coming into contact with contaminated soils.
- C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil on the Burdened Property. Without the mitigation measures which have been instituted on the Burdened Property, exposure to these contaminants could take place via in-place

contact, surface-water runoff, and wind dispersal, resulting in dermal contact, inhalation, or ingestion by humans, or other species of animals. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

- D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property is used for industrial purposes and is adjacent to property dedicated to industrial and commercial land uses.
- E. Full and voluntary disclosure to the Regional Water Board of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted.
- F. Covenantor desires and intends that in order to benefit the Regional Water Board, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Regional Water Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Regional Water Board.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Regional Water Board and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the Regional Water Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

ARTICLE II DEFINITIONS

2.1 Regional Water Board. "Regional Water Board" shall mean the California Regional Water Quality Control Board for the North Coast Region and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Burdened Property.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Burdened Property as follows:

- a. Development of the Burdened Property shall be restricted to industrial, commercial or office space;
- b. No residence for human habitation shall be permitted on the Burdened Property;
- c. No hospitals shall be permitted on the Burdened Property;
- d. No schools for persons under 21 years of age shall be permitted on the Burdened Property;
- e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Burdened Property;
- f. No Owners or Occupants of the Property or any portion thereof shall conduct any excavation work on the Property, unless expressly permitted in writing by the Regional Water Board. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law;

g. All uses and development shall preserve the integrity of the cap and any remedial measures taken or remedial equipment installed on the Burdened Property pursuant to the requirements of the Regional Water Board, unless otherwise expressly permitted in writing by the Regional Water Board.

h. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Regional Water Board.

i. The Owner shall notify the Regional Water Board of each of the following: (1) The type, cause, location and date of any disturbance to the cap and any remedial measures taken or remedial equipment installed on the Burdened Property pursuant to the requirements of the Regional Water Board, which could affect the ability of such cap or remedial measures and remedial equipment to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the Regional Water Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;

j. The Covenantor agrees that the Regional Water Board, and/or any persons acting pursuant to Regional Water Board orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.

k. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property. All use and development of the Burdened Property shall preserve the integrity of any capped areas.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Regional Water Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Regional Water Board to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils under the property, and is subject to a deed restriction dated as of _____, 200_, and recorded on _____, 200_, in the Official Records of Humboldt County, California, as Document No. _____, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the Regional Water Board for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the Regional Water Board for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

If To: "Covenantor"
Pacific Gas & Electric Company
[Owners address]

If To: "Regional Water Board"
Regional Water Quality Control Board
North Coast Region
Attention: Executive Officer
5550 Skylane Boulevard, Suite A
Santa Rosa, California 95403

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Regional Water Board. This instrument shall be recorded by the Covenantor in the County of Humboldt within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor:

By: [Signature]

Title: Vice President, Environmental Affairs

Date: 2/23/05

Approved as to Form

[Signature]
Attorney

Agency:

State of California
Regional Water Quality Board,
North Coast Region

By: Catherine Kuhlman

Title: Executive Officer

Date: 12.16.04

State of California)
County of)

On ^{EJD} February 23, 2005 before me, ELIZABETH J. Diamond,
personally appeared ROBERT L. Harris

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Elizabeth J. Diamond



State of California)
County of) Sonoma

On December 14, 2004 before me, Jennifer Sibley, Notary Public,
personally appeared Catherine Kuhlman

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Jennifer Sibley

